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## Procedures re Seeking Review by Supreme Court

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DEPARTMENT OF THE ARMY  
U.S. Army Corps of Engineers  
WASHINGTON, D.C. 20314-1000

20 March 1998

REPLY TO  
ATTENTION OF:

CECC-K (27)

MEMORANDUM FOR DIVISION, DISTRICT, LABORATORY, AND FOA COUNSEL

SUBJECT: Concerning Supreme Court Review of Cases - Procedures vis-a-vis the Army General Counsel

1. The Army General Counsel has recently issued a memorandum which sets forth procedures when the issue of Supreme Court review of cases arises. A copy of that memorandum is attached.
2. By the terms of the memorandum, the Chief Counsel has the obligation to inform the Office of the General Counsel the same day that we receive a request from the Department of Justice to provide our views on whether to seek Supreme Court review of a particular case. We have two days from that date to forward relevant briefs and lower court decisions to the General Counsel. Moreover, we are required to submit a draft response to the Army General Counsel no less than five days before a final response is due to the Department of Justice. In addition, the Chief Counsel has decided that he wishes to offer a personal briefing for the Army General Counsel on the facts of the case the same day that we notify his office of the case.
3. Although requests for views concerning writs of *certiorari* are normally received in writing at HQUSACE, this is not always the case. In view of the delegation of cases to Districts, it is possible that requests for views on the appropriateness of Supreme Court cases might be initiated by local U.S. Attorneys, or the Corps may initiate requests for *cert.*, we may be asked to comment, or others may initiate *cert.* requests. Because of our commitment to offer to brief the Army General Counsel that day (or at least by the close of the next business day), it is imperative that any requests for a position on Supreme Court review of a case be immediately transmitted by electronic mail as well as telephone to HQUSACE (Attn: CECC-K). In addition, your offices should be prepared to assist this office in quickly putting together the factual briefing the Chief Counsel has offered to make available to the General Counsel, as well as forwarding (through Division) views on the appropriateness of a *certiorari* petition so that we are able to prepare the draft reply to the Department of Justice in a timely manner.
4. Please share this memorandum plus the enclosed correspondence from the Army General Counsel with the attorneys on your staff.

/s/

MARTIN R. COHEN  
Assistant Chief Counsel  
for Litigation

cc:  
CEREZ-A

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## Enclosure

Note: Enclosure will be scanned and included here when it is received.

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*Send comments to: Webmaster*

*Revised: 20 March 1998*



GENERAL COUNSEL OF THE DEPARTMENT OF THE ARMY  
104 ARMY PENTAGON  
WASHINGTON DC 20310-0104  
February 27, 1998



MEMORANDUM FOR CHIEF COUNSEL, U.S. ARMY CORPS OF ENGINEERS,  
COMMAND COUNSEL, ARMY MATERIEL COMMAND,  
THE JUDGE ADVOCATE GENERAL

SUBJECT: Recommendations Concerning Supreme Court Review of Cases

This week, I was asked to sign a letter to the Office of the Solicitor General setting forth the Army's position on whether to seek Supreme Court review of a case recently decided by the 4<sup>th</sup> Circuit. This letter arrived in my office the day before it was to be sent to the Office of the Solicitor General. As a result, I was not able to conduct an adequate review to determine whether the Army should advocate seeking a petition of *certiorari* in the case. Therefore, I refused to sign the proposed letter, and directed that the case not be considered for *certiorari* because of the failure to allow adequate time for an independent review of the facts and case law. I shall do the same in all future cases in which there has been absence of timely notice or an inadequate time has been allotted to conduct an independent review of the issue raised.

This memorandum is intended to clarify procedures for forwarding letters regarding Supreme Court review of cases, so that I have the opportunity to undertake a meaningful review of these important cases. In the future, your office should notify my office on the same day that your office receives a request from the Department of Justice to provide views on whether to seek Supreme Court review of a particular case. In addition, your office should forward to my office copies of lower court decisions and relevant briefs within two days of receiving a request from the Department of Justice (DOJ). Finally, your office should provide my office with a draft response to DOJ request at least five working days before the letter is due to DOJ.

Furthermore, I expect that as soon as any lawyer within the Office of the General Counsel becomes aware that such an issue is pending, they will notify me immediately and at a minimum provide me with a copy of the opinion under consideration for review.

One of my most important functions as General Counsel is to establish the final position of the Department of the Army in these cases. I am confident that the procedures that I have established in this memorandum will further the flow of information between our legal offices and will lead to the best possible decisions concerning Supreme Court review of cases.

William T. Coleman III